

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

APOTEX, INC.,

Plaintiff,

v.

CEPHALON, INC., *et al.*

Defendants.

Civil Action No. 2:06-cv-2768-MSG

**APOTEX, INC.’S AGREED MOTION TO WITHDRAW ITS
MOTION FOR AWARD OF ATTORNEYS’ FEES AND COSTS**

Apotex respectfully moves the Court to withdraw its pending Second Motion for Attorney Fees and Expenses and to Declare This an Exceptional Case (Dkt. No. 580) (the “Motion for Fees”). In support of the instant Agreed Motion to Withdraw (the “Motion to Withdraw”), Apotex states as follows:

1. On April 25, 2012, the Court entered Partial Final Judgment for Apotex with respect to Counts I, II, III, and V of the Second Amended Complaint (the “Patent Counts”). *See* Dkt. No. 557.

2. On April 8, 2013, the U.S. Court of Appeals for the Federal Circuit unanimously affirmed the Judgment in a *per curiam* opinion. *See* Dkt. 578. Defendants’ motion for rehearing and rehearing *en banc* was denied on June 7, 2013, and on June 14, 2013, mandate issued.

3. Apotex subsequently filed its Motion for Fees, which is currently pending. *See* Dkt. No. 580. The Motion for Fees is not yet fully briefed, and the Court has not yet ruled on the Motion for Fees.

4. As noted by Defendant Cephalon, Inc. in its Unopposed Motion to Extend Time (Dkt. No 586), counsel for Apotex and Cephalon were working to resolve the issues raised in Apotex's Motion for Fees. The parties have since reached a confidential resolution to these issues, and jointly request that Apotex be permitted to withdraw the pending Motion for Fees. The parties have agreed that, should a condition related to the resolution of the Motion for Fees fail to occur, Apotex Inc. may re-file its Motion for Fees within 40 days without prejudice, but do not anticipate the need to do so.

Dated: August 1, 2013

Respectfully submitted,

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